

**RULE 17.1, PLEAS OF GUILTY AND NO CONTEST — Deferring acceptance of plea — Revised 11/2009**

The trial court can defer acceptance of a guilty plea up until the time of judgment, to allow time to obtain additional facts that may affect whether or not the court will accept the guilty plea. In *Lombrano v. Superior Court*, 124 Ariz. 525, 606 P.2d 15 (1980), after accepting a guilty plea, the court discovered that the defendant had prior felony convictions and set aside the guilty plea *sua sponte*. The defendant argued that acceptance of the plea placed him in jeopardy, and the Arizona Supreme Court granted relief. The Court reasoned that Rule 26.1(a), Ariz. R. Crim. P., provides, "The term judgment means the adjudication of the court based upon . . . the plea of the defendant . . . that the defendant is guilty," and Rule 26.1(c) provides, "The term determination of guilt means . . . the acceptance by the court of a plea of guilty or no contest." The Court noted that Rule 17.3 allows the trial court to defer judgment by deferring acceptance of the plea to allow time to obtain full background information first. While a court can set aside a guilty plea until the time of judgment, the court may not do so afterwards. *Id.* at 526, 606 P.2d at 16. Accordingly, the defendant's guilty plea was reinstated. The Court also stated, "If a defendant, after acceptance of a guilty plea by the court, moves to withdraw his guilty plea, he of course waives the jeopardy defense if his motion to withdraw is granted." *Id.*